THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.21376 of 2001

Dated:24.08.2007

Between:

S.Shyam Kesar Singh, S/o.Late Udal Singh.

…Petitioner

and

Government of Andhra Pradesh,
Rep.by its Commissioner Appeal
Office of the Chief Commissioner of
Land Administration, A.P.,
Station Road, Nampally, Hyderbad,
and another.

…Respondents

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ORDER:

The land admeasuring Ac.1.15 guntas in Survey Nos.51/E and 53/E was owned by the grandmother of the petitioner, Smt.Kesari Bai. After coming into force of the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Act'), Kesari Bai filed a declaration before the second respondent bearing No.H1/5527/76. After processing the same, the second respondent issued a draft statement under Section 8(1) of the Act and a notice under Section 8(3) of the Act was issued on 01.05.1982. In the meanwhile, Kesari Bai died. The petitioner's father, Udal Singh, came on record and pursued the matter. He submitted objections to the draft statement on 24.05.1982. He raised two objections: that he is a small farmer mainly depending on agriculture, that the subject land is situated in Moosi River bed, and is being used for agriculture; secondly, the land is always under submergence of water, except for a couple of months, and therefore, sought exemption. These two objections were considered, and were

not accepted. The second respondent passed final orders under Section 8(4) of the Act on 20.09.1990 declaring Udal Singh as surplus vacant land holder in an extent of 4566 square metres. He also passed award, and the petitioner and his mother preferred an appeal before the first respondent, which was dismissed on 28.03.2001. In this Writ Petition the order of the appellate authority is assailed as illegal and arbitrary.

Learned Counsel for the petitioner submits that when the matter was processed with the second respondent by Kesari Bai and Udal Singh, the petitioner was a minor and no proper enquiry was conducted by the Special Officer. It is submitted that when once the land is used for agriculture, the same stands exempted as per Section 2(o) of the Act, and therefore, it cannot be treated as surplus vacant land. Learned Counsel also submits that the petitioner has obtained a certificate vide Letter No.7686/P5/HUDA/2001, dated 25.08.2001, from Hyderabad Urban Development Authority (HUDA) to the effect that the land in Survey Nos.51 and 53 is partly recreational use zone and partly water body, and therefore, it cannot be treated as vacant land for the purpose of the Act. **Opposing** the Writ Petition, the learned Special Counsel for Urban Land Ceiling submits that the predecessor of the petitioner raised two objections, and both were considered and rejected by the original authority as well as the appellate authority, and therefore, the matter cannot be adjudicated.

The main objection of the declarant before the second respondent was that the land is agricultural land situated in the Moosi River bed, that it is always under submergence, and therefore, the same cannot be treated as vacant land for the purpose of the Act. A perusal of the order of the original authority as well as the appellate authority would show that enquiry into this aspect was not conducted by following proper procedure. The original authority entirely relied on the information he obtained from HUDA to the effect that it is the land used for other purpose than agriculture. This approach certainly is not in accordance with law. Therefore, on this limited ground alone, the impugned orders are set aside, and the matter is remitted to the second respondent. It is open to the petitioner to approach the second respondent with a copy of this order and place all material. Liberty is also given to the petitioner to raise additional grounds, if so advised.

The Writ Petition is accordingly allowed. No costs.

(V.V.S.RAO, J)

24.08.2007
vs